

## Columbia Law School Essay on Net Neutrality

Content is King

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The introduction of any major new communicative technology brings forth changes to human interaction that affect the structure of society at large. This much is certainly true of the Internet. The question for the population inevitably becomes, which of these changes should be embraced and which avoided? While there is a tendency to oppose any regulation that would alter the Net, some limitations on Internet capabilities are appropriate. Regulation should be used to control harmful features of the Internet and protect beneficial features. The most beneficial feature of the Internet is the democratization of speech, allowing the popularity of websites to be determined according to content, instead of capital. While content is king now, industry is working hard to dethrone it and install capital as the chief determiner of Internet traffic.

Although the tendency is strong to oppose any new regulation of the Internet, some aspects of the technology present real problems that can and should be dealt with. As more services go online, the Internet develops into a true virtual world, and opportunities that are foreclosed in the physical world become available online. In particular, the Internet allows individuals to become invisible, to interact anonymously with the online community and sometimes escape responsibility for crimes. An absolutist approach to Internet regulation would ignore the potential for harm here, but this feature of the Internet is not worthy of total protection. Instead, limited and narrowly tailored regulation, such as tracking IP addresses in certain situations, may be appropriate to control this emergent property of the Net.

Other properties of the Internet must be safeguarded. Without a doubt, the feature that is most deserving of protection is network neutrality that allows equality on the Net. What makes the Internet so special is that it nearly eliminates the monopoly over speech that exists for the monied interests in the physical world. Because of the costs of production and distribution associated with traditional media, an ordinary individual or even a committed group of activists could never compete with a well-financed news corporation. As a result, the old adage that "freedom of the press exists for those who own one" rings true in the physical world. But the Internet drastically lowers the costs of production, thereby allowing [dailykos.com](http://dailykos.com) to compete with [nytimes.com](http://nytimes.com) in a way that [Z Magazine](http://ZMagazine.com) could never compete with the New York Times print edition, for instance. The principle of network neutrality, which mandates that network service providers not interfere with the content of the Internet by favoring some sites over others, places all websites on equal ground. Consequently, users have a much greater number of options for news and opinion,

and the success of a site is largely dependent on the quality of its content, as it should be. While the financial resources behind a website do still have an effect – a wealthy site can draw users with visually attractive pages, advertising, and name recognition – the content of a website is nonetheless a major determiner of a site's popularity.

But this integral component of the Internet is under attack. Congress is currently considering legislation that could destroy network neutrality. Under the Communications Opportunity, Promotion, and Enhancement Act of 2006, the FCC may not require telecommunications companies to abide by the principle of network neutrality. If enacted, the law will allow the companies that own broadband networks to charge websites premium rates for better access by their users. The result will be a multi-tiered Internet – sites that can afford the premium will have lower page-load times while sites that cannot will be left with a slower site.

Elimination of network neutrality will harm Internet equality in two ways. Most directly, websites owned by wealthy parties will be able offer a fundamentally better product – a faster, more accessible website. Sites without the same financial backing will not be able to compete, for even a slight advantage in accessibility will likely draw many more users. But the potentially greater harm comes from the fact that a website's success will have to depend on financial resources, often advertising, thereby destroying the financial (and perhaps editorial) independence of popular websites. Political sites that are independent now will be forced to become slaves to advertisers in order to compete. Fundamentally, both of these harms result from the same problem – a regime that forces a website's success and accessibility to be dependent on capital, instead of content. The precious feature of the Internet – the democratization of speech – will be replaced with an approximation of the physical world. No longer will a speaker's value be determined according to what he has to say, but rather according to the depth of his pockets. Industry is seeking to impose precisely the unfortunate aspect of the physical world that the Internet allows us to avoid.

In the face of threats to the Internet, there is a tendency to want to protect and preserve anything and everything that is part of the Net. While skepticism over Internet regulation is important, so is rationality. Instead of protecting anything that is "net-like," we should consider each feature of the Internet independently, and decide whether it is helpful or harmful. Opposing all forms of Internet regulation causes us to ignore the real threats to the Internet – those that seek to restore the dependence upon capital of speech in our society. Wealth is the only inherent advantage of the corporate media, so it makes sense that they would seek to impose a regime that forces success to be dependent on wealth. In order to maintain equality for all speakers however, content, not wealth, must be king.